

**CALIFORNIA COUNCIL FOR ENVIRONMENTAL
AND ECONOMIC BALANCE
100 Spear Street, Suite 805, San Francisco, CA 94105**

VIA ELECTRONIC MAIL

September 7, 2004

Ms. Tam Doduc
Deputy Secretary for Environmental Quality
California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812
E-mail: EnvJustice@calepa.ca.gov

**Re: CCEEB's Comments regarding the August 2004 Draft of Cal/EPA's
Environmental Justice Action Plan**

Dear Ms. Doduc:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor and public leaders that strives to advance collaborative strategies that protect public health and the environment while allowing California's economy to grow. Following are CCEEB's comments regarding the August 2004 draft of Cal/EPA's Environmental Justice Action Plan (the "Draft Plan").

1. General Comment

We note that the Draft Plan is a well-written document.

2. Development of Guidance on Precautionary Approaches – Meaning and Draft Proposal (Page 5/Section 2.1)

In Section 2.1 of the Draft Plan, Cal/EPA is proposing to have the Precautionary Approaches Workgroup, with representatives from all Cal/EPA Boards, Departments and the Office of Environmental Health Hazard Assessment ("OEHHHA") (the "BDOs") take specified steps relative to precautionary approaches, develop guidance on precautionary approaches and recommend implementation options.

As noted in our June 30, 2004 comments on the initial outline of the Action Plan, CCEEB believes that it is appropriate for Cal/EPA to provide guidance regarding precautionary approaches. As we suggested in the Advisory Committee's process, it is appropriate for each BDO to identify where they use a precautionary approach or where a precautionary approach could be used. CCEEB noted that CCEEB believes that Cal/EPA does already use a precautionary approach. For example, OEHHA's risk assessment guidance for air toxics regulation is more stringent than the EPA's risk assessment guidance.

The key is that efforts to use precaution be reasonable and be based in good science – not on speculation. In our view, there are extreme forms of precaution, including the precautionary principle (e.g., the Wingspread Statement). We were pleased that the Advisory Committee decided to **not** include the precautionary principle in its recommendations after hearing extensive public testimony and presentations by experts on the different sides of the issue. CCEEB will continue to raise concerns about proposals aimed at implementing the precautionary principle and related aspects (e.g., **mandated** chemical/process/product substitutions, etc.). (Please see CCEEB's Alternative Opinion in Section VIII. of the Advisory Committee's report.)

But speaking to the August 2004 draft of the Action Plan, the specific actions appear to be reasonable – assuming that Cal/EPA is not intending this effort to be implementation of the precautionary principle. (If that assumption is incorrect, Cal/EPA should be straightforward about its intention and engage a dialogue on **that** issue.) Having a priority of implementing reasonable, cost-effective precautionary approaches is a good opportunity for achieving low-cost environmental improvements.

3. Development of Guidance on Cumulative Impacts - Premature Nature of Multi-Media Aspect (Page 5/Section 2.2)

A. Guidance and Implementation Options (Page 5, Section 2.2, 4th Bullet)

As explained below, CCEEB's most significant concern regarding the Draft Plan relates to Section 2.2 regarding the development of guidance and implementation options on **multi-media** cumulative impacts. The fourth bullet proposes that a **Multi-Media** Cumulative Impacts Workgroup develop "guidance on **multi-media** cumulative impacts analysis, prevention and reduction; and recommend implementation options, including proposals for policy regulatory, and statutory changes." [Emphasis added.] CCEEB's concern, as explained below, is that it is **premature for Cal/EPA to be developing guidance and implementation options** related to **multi-media** cumulative impacts.

CCEEB believes that regulation of cumulative exposure or risk related to an environmental media such as air needs to be based on: 1) clear definitions; 2) science-based and peer-reviewed tools for assessing cumulative exposures or risk for that medium; and 3) science-based and peer-reviewed implementation criteria (e.g., for determining if the assessed level of cumulative impacts for that media is too high). Such a program exists for criteria air pollutants such as ozone. For these air pollutants, exposure (i.e., the concentration of the pollutant in the air) is measured against criteria (i.e., the federal and state ambient air quality standards). However, **moving ahead with a multi-media program is premature when key cumulative impacts tools are not yet developed or peer-reviewed for individual environmental media and related implementation criteria have not been developed and peer-reviewed for the individual environmental media.** For example, the Air Resources Board is currently developing tools for assessing cumulative risk due to toxic air pollutants. How would you conduct a combined (multi-media) cumulative impacts analysis for air and water when you are still working on how to assess and evaluate air toxics risk on a cumulative basis?

CCEEB suggests that the words “multi-media” be deleted from the Workgroup’s name, and that the Workgroup’s action items, with the exception of initial discussions regarding the definition (please see Section 3.B. below), relate to individual environmental media (e.g., air). CCEEB suggests that the Workgroup members share information regarding where each BDO is relative to having science-based and peer-reviewed tools for assessing cumulative impacts within its programs (e.g., ARB for the air quality programs) and equitable, science-based and peer-reviewed implementation criteria for use of those tools. These suggestions are consistent with CCEEB’s Alternative Opinion in the Advisory Committee’s report (at Pages 38-39).

Please note that CCEEB recognizes the desire by some groups for Cal/EPA to move immediately to address **multi-media** cumulative impacts. However, doing so in a simplistic manner is not likely to result in an effective, reasonable and equitable program. Given the rather extreme nature of the measures that some groups have suggested for addressing unusually high cumulative impacts (e.g., denial of permits, relocation of businesses), it is critical that Cal/EPA and the BDOs work through this important area in a rational fashion. In the meantime, Cal/EPA programs for each media are resulting in improved environmental quality and reduced cumulative risk for communities.

B. Definition of “Multi-Media Cumulative Impacts” (Page 5, Section 2.2, 1st Bullet)

The first bullet in Section 2.2 proposes that the Workgroup develop a “common, objective definition for multi-media cumulative impacts.” CCEEB recognizes that the development of an appropriate definition will be a key part of Cal/EPA’s and the BDOs’ work on environmental justice. It may be appropriate for this Workgroup to have **initial** discussions

regarding how “cumulative impacts” should be defined on a multi-media basis. However, **it would be premature for the Workgroup or Cal/EPA to finalize such a definition before the cumulative impacts tools and criteria have been developed for the individual media.** Those tools and criteria are likely to affect how a definition for multi-media cumulative impacts should be written (i.e., you need to know what the parts of the equation are before you write the equation).

C. Cumulative Impacts Studies/Protocols - Need for Scientific Peer Review (Page 5, Section 2.2, 2nd Bullet)

In the second bullet in Section 2.2, Cal/EPA is proposing that the Workgroup inventory “current cumulative impacts studies, protocols, and tools and identify needs to be addressed.” CCEEB supports inclusion of this bullet. We suggest that Cal/EPA add to this part of the Action Plan the step of determining whether or not the inventoried tools have been appropriately peer-reviewed. We note that at Page 25 of its report, the Advisory Committee recommends that Cal/EPA:

“Develop, through a public process, **peer-reviewed** tools to assess cumulative impacts, and equitable scientifically based criteria for using these tools, especially as they be used to further the goals of environmental justice.” (Emphasis added.)

4. “Common” Public Participation Guidelines (Page 6, Section 2.4, Introduction and 1st Bullet)

In Section 2.4, Cal/EPA is proposing that the Department of Toxic Substances Control (“DTSC”) staff lead the intra-agency Outreach and Public Participation Workgroup (the “OPP Workgroup”), and that this Workgroup, among other things, develop “common” public participation guidelines by the spring of 2005. CCEEB recognizes that DTSC has extensive experience in this area and agrees that DTSC is an appropriate lead BDO for this Workgroup. We offer two comments in this area.

First, we urge Cal/EPA and the BDOs to think through what part of public participation guidelines should be the same from BDO to BDO (i.e., “common”) and which parts of the guidelines should be different from BDO to BDO. For example, most ARB programs (e.g., an automobile standards regulation) apply statewide. However, for another BDO, such as the Integrated Waste Management Board, the BDO may take some actions that apply statewide but may also take some actions that affect only one local area. The public participation steps for these different types of actions would probably need to be different.

Second, as an example, we note that ARB has recently developed public participation guidelines for use by the public. The ARB EJ Stakeholders Group reached consensus on that

document – which ARB staff prepared pursuant to ARB’s EJ Action Plan. We hope that this Cal/EPA effort will focus on where there are gaps in the public participation process and not “reinvent the wheel” where BDOs already have effective work products in place.

5. “EJ” Complaint Resolution Protocols (Page 6, Section 2.4, 5th Bullet)

In Section 2.4, Cal/EPA is proposing that the OPP Workgroup would, among other things, “Develop EJ complaint resolution protocols by the summer of 2006.” We have two comments in this area. First, CCEEB suggests that Cal/EPA may want to simply refer to “complaint resolution protocols” as opposed to “EJ complaint resolution protocols.” We note that ARB, working with the ARB EJ Stakeholders Group developed a “Complaint Resolution Protocol.” Although the EJ Stakeholders worked on that document, the scope of the document was air pollution complaints (as opposed to “EJ complaints.”). The expectation is that the ARB Complaint Resolution Protocol will be valuable because it makes the complaint resolution process transparent to ARB staff, the air districts, communities and businesses.

Second, in reading the Draft Plan, we expect that Cal/EPA is suggesting that the BDOs, through the OPP Workgroup process, develop protocols similar to the one that ARB has developed – but tailored to the particular BDO’s programs (which would be appropriate). We suggest that ARB’s recently-developed protocol should satisfy this action item for ARB, and a comment or footnote should be added to the Action Plan to that effect. We question whether OEHHA will need such a protocol.

6. Local Advisory Groups (Page 7, Section 2.5, and Page 10, Section 4.2)

Cal/EPA is suggesting the formation of Local Advisory Groups (“LAGs”) – one for each of the four pilot projects. Having LAGs makes sense, but it will be important to have an appropriate process for the selection of LAG members. At Page 10, Cal/EPA is proposing that Subcommittees of the Cal/EPA Advisory Committee on Environmental Justice be formed to organize and lead the four LAGs. CCEEB suggests that Cal/EPA needs to think through whether using Subcommittees of the Advisory Committee to organize and lead the LAGs is the best approach. Although input from Advisory Committee members would be helpful as to LAG makeup or the process for formation of the LAGs, we expect that input from others that have familiarity with the subject of the pilot project and/or the particular local area and issues would also be important.

The Draft Plan is silent as to who would lead a LAG and the composition of LAGs. CCEEB suggests that Cal/EPA amend the Draft Plan to:

- A) specify that the lead person for the Board or Department that is leading the particular pilot project will chair the LAG for that project; and
- B) specify that the makeup of the LAGs will be balanced and will include representatives from the relevant local or regional environmental agency (e.g., the air district for the air quality pilot project) and the business community, in addition to community representatives.

7. Important Considerations (Page 9, Section 3.3)

At Page 9, Cal/EPA proposes that Cal/EPA and its BDOs will “take steps to make decision making processes more available and responsible to community concerns, pursue options that meet the business community’s need for fair and predictable processes, and develop requirements that are feasible both technically and on the basis of cost.” CCEEB supports inclusion of this statement in the Action Plan. As Cal/EPA notes, this statement is consistent with the Advisory Committee’s recommendations report (at Page 15).

Also at Page 9, Cal/EPA writes “Cal/EPA and its BDOs will strive to avoid extreme interpretations and seek options that do not have an adverse economic impact on the community, jobs, and rural and local governments.” CCEEB supports inclusion of this statement in the Action Plan.

8. ChERRPs – Need for Peer Review (Page 9, Section 3.3)

Depending on the content of the Children’s Environmental Risk Reduction Plans (“ChERRPs”), there may be a need for scientific peer review of the scientific foundation for a ChERRP. Cal/EPA should include a step in the ChERRP process for a determination of whether peer review is needed.

9. Timing of Public Workshops (Page 10, Section 4.1)

At Page 10, the last sentence of the first paragraph would state: “Workshops will be conducted early in the process to solicit relevant information, data, and suggestions for the direction and scope of these efforts.” CCEEB agrees that it is important to conduct such workshops early in the process. We suggest that it also important to conduct workshops during the process. We suggest the following edit:

Workshops will be conducted early in the process, to solicit relevant information, data, and suggestions for the direction and scope of these efforts, and during the process.

10. Milestones - General Comment (Page 11, Section 5)

The currently proposed milestones appear to follow an aggressive schedule. We urge Cal/EPA to ensure that key areas (e.g., cumulative impacts methodologies) are given appropriate time during implementation of the plan, and in the “next steps” that follow, for technical reviews, public participation, peer review and in-depth discussions regarding policy issues.

11. Milestones – Pilot Projects/ChERRPs – Completion and Written Report (Page 11, Section 5)

First, the milestones section could be clearer as to the estimated time for when the pilot projects/Children’s Environmental Risk Reduction Plans (“ChERRPs”) would be completed. (It appears that completion is targeted for fall of 2006, but that is not clear.)

Second, we suggest that Cal/EPA prepare a written report on the pilot projects/ChERRPs. This will provide information to stakeholders who are not able to participate in each of, or all of, the pilot projects. We suggest that Section 5.5 address the timing for issuance of this written report.

12. Terminology – “Environmental Justice Scenario” (Page 3, Section 1.1)

As a last comment, we raise one issue of terminology. In the last paragraph on Page 3, the Draft Plan references the assessment of different “EJ scenarios.” We do not think that this term has been defined elsewhere, and it is vague. We suggest that Cal/EPA clarify what is intended here. For example, if this term is intended to mean situations where a community is exposed to unusually higher levels of exposure to pollutants or health risk than other communities in a region (an appropriate focus), that could be said more explicitly.

CCEEB appreciates Cal/EPA’s consideration of these comments. If you have any questions, or if you would like to discuss the comments, please contact me at (415) 512-7890 or Cindy Tuck at (916) 442-4249.

Sincerely,

VICTOR WEISSER
President

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Via Electronic Mail

cc: Honorable Terry Tamminen
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